

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 13, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GERALD HALSEY, BETTY
HALSEY, GERALD R HALSEY
and/or BETTY J HALSEY LIVING
TRUST, IRIS MALLORY, and
LUCIAN LYONS,

Plaintiffs,

v.

STEPHEN CROSKREY and BONASA
BREAKS RANCH LLC, a Florida
limited liability corporation,

Defendants.

No. 2:20-cv-00371-SMJ

**ORDER DENYING MOTION TO
DISMISS AS MOOT**

Before the Court, without oral argument, is Defendants' FRCP 8(a)(2), FRCP 10(b) and 12(b)(6) Motion to Dismiss for Failure to State A Claim Upon Which Relief Can Be Granted, ECF No. 7. The Court denies that motion as moot.

Plaintiffs sued Defendants on October 9, 2020. ECF No. 1. Defendants moved to dismiss on December 22, 2020 and set a hearing without oral argument for January 22, 2021. ECF No. 7. On January 8, 2021, Plaintiffs filed their First Amended Complaint for Trespass, Negligence, Negligence Per Se, Nuisance, Negligent Infliction of Emotional Distress, and Strict Liability. ECF No. 9.


1 Federal Rule of Civil Procedure 15(a)(1) allows a party to amend their
2 complaint “once as a matter of course within . . . 21 days after service of a motion
3 under Rule 12(b).” An amended complaint supersedes the original complaint and
4 renders it without legal effect. *E.g., Lacey v. Maricopa County*, 693 F.3d 896, 927
5 (9th Cir. 2012); *Rhodes v. Robinson*, 621 F.3d 1002, 1005 (9th Cir. 2010) (“As a
6 general rule, when a plaintiff files an amended complaint, [t]he amended complaint
7 supersedes the original, the latter being treated thereafter as non-existent.”) (internal
8 citation and quotation marks omitted). The parties (and the Court) must therefore
9 treat the original pleading filed by Plaintiffs as nonexistent. *See id.* The Court thus
10 denies Defendants’ motion to dismiss as moot. *See also Huang v. Genesis Glob.*
11 *Hardware, Inc.*, No. 220CV1713JAMKJNPS, 2020 WL 6318206, at *1 (E.D. Cal.
12 Oct. 28, 2020) (collecting cases).

13 Accordingly, **IT IS HEREBY ORDERED:**

14 Defendants’ motion to dismiss, **ECF No. 7**, is **DENIED AS MOOT.**

15 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and
16 provide copies to all counsel.

17 **DATED** this 13th day of January 2021.

18 
19 SALVADOR MENDOZA, JR.
20 United States District Judge